THE HON'BLE SRI JUSTICE C.V. RAMULU

Wednesday, the 8th day of August,2007

W.P.No.15790 of 2001

Between:-

Singareni Collieries Company Ltd.,
Ramagundam Area-III, rep. by its
General Manager, Karimnagar
District … Petitioner

and

Singareni Collieries Employees
Union (Regd.No.E-171) affiliated to
CITU, Hyderabad, rep. by its
General Secretary and others … Respondents

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ORAL ORDER:

This Writ Petition is filed seeking a Certiorari to call for the records relating to the Award dated 27-4-2001 made in I.D.No.45 of 1999 on the file of Industrial Tribunal-I, Hyderabad – 3rd respondent - and quash the same as arbitrary and illegal.

Petitioner is the Management. Respondent No.1 is the Union and the 2nd respondent is the concerned workman.

It appears, when the services of the workman-Pittala Venkataiah, General Mazdoor, OCP-III, CHP of RG-III, Godavarikhani were dismissed with effect from 21-7-1998, the Union raised a dispute before the Conciliation Officer and on failure, the matter was referred to the Industrial Tribunal-I, Hyderabad for adjudication of the following issues:

1. Whether the action of the Management of M/s.S.C.C.L. OCP-III Ramagundam Area-III, Godavarikhani in dismissing the services of Sh. Pittala Venkataiah, General Mazdoor OCP-III, CHP of RG.III, Godavarikhani w.e.f. 21/7/1998 is justified ?
2. Whether the workman is entitled for reinstatement with back wages and other consequential benefits ?
3. If not, to what relief the workman is entitled ?

It was the case of the respondent-workman before the Tribunal that he had joined in the petitioner-company on 21-9-1988 and discharged his duties to the satisfaction of one and all. As Secretary of the Union, he had represented the grievance of other workmen to the

Management, which was not relished by the Management and, therefore, a false charge sheet dated 21-9-1997 was issued to him, as a measure of victimization and to curb his lawful trade union activities. In pursuance of the said charge sheet, an enquiry was ordered and he was dismissed from service with effect from 21-7-1998. The appeal filed by him to the Chairman/Managing Director of the Company was also rejected. Thereafter, he moved the conciliation and on failure, the matter was referred to the Tribunal. According to the workman, he is not at all concerned with the demand raised by the other trade union in respect of the wages of 16 workers. A charge sheet was also issued making false allegations that he instigated the other workmen to go on strike. The domestic enquiry conducted was not fair and proper and it was in utter violation of principles of natural justice. The Enquiry Officer gave a finding with a partisan attitude. He conveniently ignored the evidence of defence witnesses. There was absolutely no evidence on record to prove the charges framed against him. In spite of the infirmities, the Enquiry Officer gave a finding that the charges were proved and he was removed from service. Assuming that the charges were proved, the punishment of dismissal from service is arbitrary and illegal.

The Management filed its counter before the Tribunal asserting that on 21-9-1997 in the first shift, the workman had induced other workers to go on strike for settlement of the demand of wages of 16 other workmen. Further, the workman had interfered with the duties of the shift charge hands and also responsible for the illegal strike, which affected the coal dispatch to NTPC and FCI. A full-fledged enquiry was conducted, in which the workman was given full opportunity to defend himself. The company is an essential public utility service and as such, no strike can be made without giving notice and no notice of

any kind was issued by the Union for going on strike on 21-2-1997 and 22-2-1997. The workman went on strike making illegal demands to pay wages to 16 workers, who have not performed duty. On account of strike, the company suffered loss and damage; as such, disciplinary action was initiated and the order of dismissal from service is just and proper.

No oral evidence was adduced on both sides and no documentary evidence was also marked on behalf of the workman. But, on behalf of the Management, Exs.M1 to M18 were marked. After going through the entire material placed before it, the Tribunal came to the conclusion that though the Management had made efforts to prove the misconduct of the workman through its interested witnesses so as to attract the Standing Order Nos.25(11) and 25(24), but it has miserably failed to establish the guilt of the workman. Though cessation of work by a body of persons employed in an industry with concerted action and refusing to work may constitute strike, the authorities concerned have not taken any action and not taken any steps to decide whether the strike was legal or illegal and not initiated any conciliation proceedings etc. Under those circumstances, it was held that the dismissal of the workman from service was illegal and consequently directed that the workman shall be reinstated with continuity of service and with full back wages. Aggrieved by the same, the Management filed the present Writ Petition.

While admitting the Writ Petition on 6-8-2001, interim stay of the impugned Award was granted, subject to complying with the provisions of Section 17-B of the Industrial Disputes Act,1947 and on condition of deposit of 50% of back wages, within a period of six weeks and further the workman was permitted to withdraw the same, without furnishing any security. Learned counsel for the petitioner,

however, stated that the back wages, as directed by this Court, were not deposited. Therefore, the Writ Petition is taken up for final hearing with the consent of both the parties.

The sum and substance of the misconduct alleged against the workman was that he had instigated the workers and struck the work by way of a concerted action, which caused loss to the organization and the strike was illegal. As seen from the above, the illegal strike attributed to the petitioner was not proved and absolutely, there was no positive evidence placed before the Tribunal. This is not a case where the Tribunal has found that the charges were proved, but the punishment is disproportionate to that of the misconduct. Therefore, the Tribunal has ordered reinstatement of the workman with continuity of service, full back wages etc. I am of the opinion, may be, the Tribunal was right, in the absence of any evidence before it, to come to the conclusion that the order of dismissal was illegal. But, in a case of this nature, where the strike was not denied, it cannot be said that the respondent-workman is entitled for full back wages. In the facts and circumstances of the case, I am of the opinion, denying of back wages would be sufficient punishment to the respondent-workman. In view of the same, the Award passed by the Tribunal is liable to be modified and is modified to the effect that the respondent-workman is entitled for reinstatement with continuity of service, but without any back wages.

With the above modification of the impugned Award, the Writ Petition is disposed of. No order as to costs.

08-8-2007

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